

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of D.T., D.T., and R.T., Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
April 20, 2006

Petitioner-Appellee,

v

ROHIMA V. TWIDDY,

No. 265328
Wayne Circuit Court
Family Division
LC No. 02-414872-NA

Respondent-Appellant.

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights under MCL 712A.19b(3)(b)(i), (b)(ii), (b)(iii), (g), (j), and (k)(ii). We affirm.

Respondent first argues that the trial court erred as a matter of law by admitting hearsay evidence of the children's statements regarding sexual abuse without holding a tender years hearing in advance of trial. We agree and admonish the trial court that MCR 3.972(C)(2) clearly states that this hearing must be held *before* trial. However, we find this error harmless where some statutory grounds for termination were established by clear and convincing evidence without the hearsay statements. See MCR 2.613(A). Because the hearsay statements were not admissible, the trial court clearly erred in finding that sections (b)(i) and (k)(ii) were established by clear and convincing evidence. See *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). However, these errors are harmless where only one statutory ground for termination need be established by clear and convincing evidence to support termination. MCL 712A.19b(3).

Regarding section (b)(ii), to the extent that the trial court found that petitioner established abuse of the children by respondent's son Michael, the trial court also clearly erred because only the children's hearsay statements established this abuse. However, clear and convincing non-hearsay evidence established that respondent had the opportunity to prevent sexual abuse by respondent Shirley, a father of one of the children who is not a party to this appeal, failed to do so, and that there was a reasonable likelihood that the children would be harmed if returned to respondent's home. Respondent admitted at the adjudication that she failed to protect the children from this sexual abuse. At the termination trial, respondent Shirley's record of

conviction for criminal sexual conduct in the first degree was admitted into evidence, and there was testimony that two of the children were the victims. Further, because this allegation was raised in the petition and was therefore not new, hearsay evidence was admissible to support this allegation. Therefore, the children's statements that they were sexually abused by respondent Shirley while respondent was present and participating also supported the allegation that respondent had the opportunity to prevent the sexual abuse and failed to do so.

It was also established that there was a reasonable likelihood that the children would be sexually abused if returned to respondent's home. Respondent lived in a home in which many adults, including several non-relatives, resided. Respondent admitted at adjudication that she maintained an improper home environment and later told the foster care worker that her home was not appropriate for the children. Given the children's previous sexual abuse and respondent's home environment, the trial court did not clearly err in finding that section (b)(ii) was established.

Regarding section (g), respondent admitted at adjudication that she maintained an improper home environment. Although respondent participated in counseling and parenting classes, she did not obtain suitable housing for the children during the over 2½ years that this case was pending. Respondent's housing was not suitable for the children because adults residing there caused a reasonable likelihood that the children would be harmed. Because of this, she failed to provide proper care and custody for her children and there was no reasonable likelihood that she would be able to do so within a reasonable time considering the children's ages.

Regarding section (j), there was a reasonable likelihood that the children would be harmed if returned to respondent's home where the children had previously been sexually abused in that home and there were several adults living there. Further, although respondent successfully completed counseling, she was not able to identify to the foster care worker the reason that the children were placed in care, demonstrating a lack of insight into prevention of future abuse. Therefore, the trial court did not clearly err in finding that section (j) was established by clear and convincing evidence.

Respondent does not separately raise the issue of the children's best interests. Regardless, we find that the trial court did not clearly err in its best interests determination. See MCL 712A.19b(5).

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald